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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CV 08

2519

Bernard John HARRISON

Case No: _____

MMC

Petitioner,

v.

**PETITION FOR
NATURALIZATION PURSUANT
TO 8 U.S.C. § 1447(b)**

Immigration Case

USCIS No.: A035-265-469

Rosemary MELVILLE, in her Official Capacity,
District Director, United States Department of
Homeland Security, United States Citizenship and
Immigration Services, San Francisco, California;
Robin BARRETT, in her Official Capacity, Field
Officer Director, United States Citizenship and
Immigration Services, United States Department of
Homeland Security, San Francisco, California;
Jonathan SCHARFEN, in his official Capacity, Acting
Director, United States Citizenship and Immigration
Services, United States Department of Homeland
Security; Michael CHERTOFF, in his Official
Capacity, Secretary, United States Department of
Homeland Security; Michael B. MUKASEY, in his
Official Capacity, Attorney General, United States
Department of Justice; and Robert S. MUELLER, III,
in his Official Capacity, Director, Federal Bureau of
Investigation

Respondents.

INTRODUCTION

1. Petitioner Bernard John HARRISON ("Petitioner") files this Petition for Naturalization pursuant to section 336(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1447(b), requesting that this Court adjudicate his application for naturalization and grant him naturalization or, if necessary, order that a hearing take place in this matter.

2. Petitioner files this Petition for Naturalization because the United States Department of Homeland Security ("DHS") in San Francisco, California, has failed to make a determination regarding his application for naturalization for well over 120 days since the naturalization examination was conducted at the United States Citizenship and Immigration Services ("USCIS") office in San Francisco, California on February 15, 2006. See 8 U.S.C. § 1447(b). His application has now been pending for two years and three monthssince the date of his interview.

3. Petitioner is a 58-year-old citizen and national of the United Kingdom, who has been a lawful permanent resident of the United States since August 8, 1976. See Declaration of Beth Feinberg ("Feinberg Dec.") at Exh. A. Petitioner filed an Application for Naturalization (Form N-400) with USCIS on October 3, 2005. Id. at Exh. B. His naturalization interview was held in San Francisco, California on February 15, 2006. Id. at Exh. D. He was subsequently informed that he had passed the naturalization examination but that a decision could not be made on his application because his case was "pending for security checks." Id.

4. Petitioner meets all statutory requirements for naturalization. See 8 U.S.C. § 1427(a). However, in the over two years since he had his naturalization interview, DHS has taken no apparent action to adjudicate his naturalization application. See 8 U.S.C. § 1447(b).

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JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 8 U.S.C. § 1447(b) (United States District Court may determine naturalization application when DHS has failed to determine the matter within 120 days of the date on which the naturalization examination was conducted); 28 U.S.C. § 2201 (Declaratory Judgment Act); and 28 U.S.C. § 1331 (federal question jurisdiction).

6. Venue is properly with this Court pursuant to 28 U.S.C. § 1391(e) because this is a civil action in which the Respondents are employees or officers of the United States, acting in their official capacity, and an agency of the United States; because a substantial part of the events or omissions giving rise to the claim occurred in San Francisco, California, in the Northern District of California; and because the named petitioner resides in the Northern District of California, and there is no real property involved in this action. See also 8 U.S.C. § 1447(b) (venue proper in "district court for the district in which the applicant resides").

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INTRADISTRICT ASSIGNMENT

7. This action should be assigned to the San Francisco Division because a substantial part of the events and omissions giving rise to this claim occurred within the jurisdiction of that division. See Local Rules 3-2(c), (d).

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PARTIES

8. Petitioner Bernard John HARRISON is a citizen and national of the United Kingdom, and a lawful permanent resident of the United States. Petitioner resides in San Francisco, California, which is within the jurisdiction of this court.

1 9. Respondent Rosemary MELVILLE is the District Director of the San Francisco
2 District Office of United States Citizenship and Immigration Services, United States Department
3 of Homeland Security, and is sued herein in her official capacity.
4

5 10. Respondent Robin BARRETT, is the Field Officer Director of the San
6 Francisco District Office of United States Citizenship and Immigration Services, United States
7 Department of Homeland Security, San Francisco, California, and is sued herein in her official
8 capacity.
9

10 11. Respondent Jonathan SCHARFEN is the Acting Director of United States
11 Citizenship and Immigration Services, United States Department of Homeland Security, and is
12 sued herein in his official capacity.

13 12. Respondent Michael CHERTOFF is the Secretary of the Department of
14 Homeland Security, and is sued herein in his official capacity. In this capacity, he has
15 responsibility for the administration and enforcement of the immigration and naturalization laws
16 pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat.
17 2135 (Nov. 25, 2002). See 8 U.S.C. § 1103.
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19 13. Respondent Michael B. MUKASEY is the Attorney General of the United States,
20 and is sued herein in his official capacity. In this capacity, he has responsibility for providing
21 access to criminal history record information, pursuant to 8 U.S.C. §§ 1105(b) and 1103(g).
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23 14. Respondent Robert S. MUELLER, III, is the Director of the Federal Bureau of
24 Investigation ("FBI"), and is sued herein in his official capacity. In this capacity, he has
25 responsibility for maintaining and providing access to criminal history record information.
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FACTS

15. Petitioner is a 58-year-old citizen and national of the United Kingdom. See Feinberg Dec. at Exh. A. He has been a lawful permanent resident of the United States since August 8, 1976. Id. Petitioner currently resides in San Francisco, California. Id. at ¶ 2.

16. Petitioner filed his application for naturalization (Form N-400) with the USCIS California Service Center on October 3, 2005. Id. at Exh. B. He appeared for fingerprinting in connection with that application on November 4, 2005. Id. at Exh. C.

17. On November 13, 2005, the FBI received a name check request in Petitioner's case from USCIS. Id. at Exh. G.

18. Petitioner had his naturalization interview with USCIS Officer Xiao in San Francisco, California on February 15, 2006. Id. at Exh. D. Petitioner was informed that he passed the required tests for the examination but that a decision would not be made at that time on his application because his case was "pending for security checks." Id.

19. On February 23, 2007, Petitioner made a telephonic inquiry to USCIS regarding the status of his naturalization application. Id. at Exh. E. On February 26, 2007, USCIS issued a written response, stating that Petitioner's application had not yet been adjudicated because the background checks were still pending. Id.

20. In February of 2007, Petitioner made an in-person inquiry with USCIS at the local San Francisco field office located on Washington Street in San Francisco, CA. Id. at ¶ 7. He was informed that his application remained pending for fingerprint and name checks. Id.

21. In March of 2007, Petitioner contacted the office of United States Congresswoman Nancy Pelosi regarding the status of his pending naturalization application. Id. at Exh. F. On March 13, 2007, Congresswoman Pelosi's office responded to Petitioner

1 indicating that because his naturalization case had been pending for more than six months with
2 the FBI, that Congresswoman Pelosi's office would initiate a formal inquiry to the FBI. Id.

3 22. On February 7, 2008, Petitioner also contacted United States Senator Dianne
4 Feinstein for assistance in determining the status of his naturalization application. Id. at Exh. G.
5 On February 22, 2008, Petitioner received a response from Senator Feinstein's office, stating that
6 the USCIS inquiry would likely take eight to ten weeks. Id. On April 18, 2008, Petitioner
7 received a second response from Senator Feinstein's office, stating that the FBI indicated that
8 Petitioner's name check was received on November 13, 2005 and was still pending. Id.

9 23. On February 7, 2008, Petitioner made another telephonic inquiry to USCIS
10 regarding the status of his naturalization application. Id. at ¶ 10. At that time, Petitioner was
11 informed by the USCIS officer that his case was still pending the FBI name check, and that it
12 could remain in that status indefinitely. Id.

13 24. Petitioner meets all the statutory requirements for naturalization pursuant to 8
14 U.S.C. § 1427. He has resided continuously in the United States for over five years as a lawful
15 permanent resident, and has been physically present in the United States for more than thirty
16 months of the five year period prior to filing his application. See 8 U.S.C. §§ 1427(a)(1), (2). In
17 addition, Petitioner always has been and remains a person of good moral character, and has
18 absolutely no criminal record (of arrests or convictions). See 8 U.S.C. § 1427(a)(3); 8 C.F.R. §
19 316.10.

20 25. Well over 120 days have elapsed since Petitioner's February 15, 2006
21 naturalization interview – in fact, it has now been two years and three months. His application
22 for naturalization has not yet been adjudicated.

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CAUSE OF ACTION
COUNT ONE
(FAILURE TO RENDER DECISION ON NATURALIZATION
WITHIN 120 DAYS OF INTERVIEW)

26. The allegations contained in paragraphs 1 through 25 are repeated and realleged as though fully set forth herein.

27. The Department of Homeland Security has failed to adjudicate Petitioner's application for naturalization within 120 days of Petitioner's naturalization examination. Pursuant to 8 U.S.C. § 1447(b), the United States District Court for the district in which Petitioner resides "has jurisdiction over the matter and may either determine or remand the matter, with appropriate instructions, to the Service to determine the matter" if no action is taken on a naturalization application within 120 days of completion of the examination. Petitioner was interviewed on February 15, 2006, well over 120 days ago. Petitioner also meets all statutory requirements for naturalization pursuant to 8 U.S.C. § 1427(a). Therefore, this Court has the authority to adjudicate Petitioner's naturalization application.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) If necessary, order that a hearing take place in this matter;
- (3) Adjudicate Petitioner's application for naturalization and grant him naturalization;
- (4) Award reasonable costs and attorneys' fees; and
- (5) Grant such further relief as the Court deems just and proper.

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COUNT ONE
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1
2 Dated: May 16, 2008

Respectfully submitted,

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4 Marc Van Der Hout (California Bar # 80778)
Beth Feinberg (California Bar # 240857)
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6 San Francisco, California 94104

7 Attorneys for Petitioner

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9 By: 
10 Beth Feinberg